

entitled to the full scope of claim equivalents.

Specification

The Examiner noted the use of the trademark "Vilmed" in claim 10 and in the specification and requested that the trademark be capitalized. VILMED™ has been capitalized and marked as a trademark at each point where it appeared in the specification and in claim 10.

Information Disclosure Statement

The Examiner stated that dates for two references, (1) Christophers, E. et al. and (2) Gilman, A.G, et al., were not included with the Information Disclosure Statement previously submitted. A Supplemental Information Disclosure Statement is submitted herewith that contains dates for these two references.

Applicant respectfully requests that a copy of the 1449 Form listing all references that were submitted with the Information Disclosure Statement filed on February 14, 2002, be marked as considered and initialed by the Examiner, and be returned with the next official communication. Applicant also respectfully requests that a copy of the 1449 Form listing all references that were submitted with the Supplemental Information Disclosure filed herewith be marked as considered and initialed by the Examiner, and be returned with the next official communication.

The 35 U.S.C. §103 Rejection of the Claims

Claims 1-25, 32, 34-44, and 51-81 were rejected under 35 U.S.C. § 103(a) as being obvious over Hymes et al. (U.S. Patent No. 6,348,212) in view of Ethier (U.S. Patent No. 4,696,854) employed as a teaching reference, and Rolf et al. (U.S. Patent No. 5,741,510). This rejection is respectfully traversed.

The Examiner rejected claims 1-25, 32, 34-44, and 51-81 under 35 U.S.C. § 103(a) over Hymes in view of Ethier and Rolf. Hymes is removed as prior art by the enclosed rule 132 Declarations. Ethier and Rolf do not establish any of the three requirements of a *prima facie* case of obviousness. Accordingly, withdrawal of the rejection of the claims under 35 U.S.C. § 103(a)

over Hymes in view of Ethier and Rolf is respectfully requested.

The present application was filed on April 2, 2001. Hymes et al. (U.S. Patent No. 6,348,212) issued on February 19, 2002, from an application filed on May 18, 1999. Thus, the only section of 35 U.S.C. § 102 under which Hymes et al. could be available as prior art is 35 U.S.C. § 102(e). Enclosed is a Declaration of David Rolf submitted under 37 C.F.R. § 1.132. In the Declaration, David Rolf states that all of the co-inventors of the presently claimed invention were employees of LecTec Corporation, and that the presently claimed invention was made in the scope of the inventors' employment at LecTec Corporation and was related to the activities of LecTec Corporation. He further declares that the time of the invention of the subject matter claimed in the present application, he and the other four co-inventors of the presently claimed invention had all signed employment agreements with LecTec Corporation. Those employment agreements are Appendices A-E of Dr. Rolf's Declaration. Each of the employment agreements includes an agreement to assign to LecTec Corporation, all rights to inventions developed while the person is an employee of LecTec Corporation or within at least one year after termination of employment with LecTec Corporation. Thus, at the time of the invention of the subject matter of the present application, the subject matter of the present invention was owned by LecTec Corporation or under an obligation of assignment to LecTec Corporation.

At the time of filing of the present application, the subject matter claimed in U.S. Patent No. 6,348,212 was also owned by LecTec Corporation or subject to an obligation of assignment to LecTec Corporation, as evidenced by the attached Declaration of Alan C. Hymes. In the Declaration, Dr. Hymes states that he and Jane Nichols, the co-inventors of U.S. Patent No. 6,348,212, executed assignment on March 6, 2001 and March 21, 2001 assigning the subject matter of U.S. Patent No. 6,348,212 to LecTec Corporation. These dates are before the filing date of the present application, April 2, 2001. These assignments were recorded with the U.S. Patent and Trademark Office on May 7, 2001 on reel 011785, frame 0074.

Thus, at the time the present invention was made, the subject matter of the presently claimed invention and the subject matter of U.S. Patent No. 6,348,212 were both owned by, or subject to an obligation of assignment to, LecTec Corporation. Thus, under 35 U.S.C. § 103(c), the Declarations of David Rolf and Alan C. Hymes are effective to remove Hymes et al. (U.S.

Patent No. 6,348,212) as prior art under 35 U.S.C. § 102(e).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation, either in the cited references themselves or in the knowledge generally available to an art worker, to modify the references or combine reference teachings so as to arrive at the claimed invention. Third, the art must provide a reasonable expectation of success. M.P.E.P. § 2143. The teaching or suggestion to arrive at the claimed invention and the reasonable expectation of success must both be found in the prior art, not in Applicants' disclosure (M.P.E.P. § 2143, citing with favor *In re Vaeck*, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991)).

Neither Rolf nor Ethier, alone or combined, teach or suggest all the elements of the present claims. For instance, neither reference discloses or suggests a backing or a portion of a backing treated with a sizing agent. Neither reference discloses or suggests a backing or portion of a backing with a surface energy of about 20 dynes/cm² to about 65 dynes/cm². Neither reference discloses or suggests a cyclodextrin or a derivative of a cyclodextrin to solubilize a corticosteroid or any medicament.

In addition, neither reference discloses or suggests a therapeutic formulation containing (a) a medicament selected from one or more topical psoriasis drugs, one or more topical dermatitis drugs, one or more topical eczema drugs, or a combination thereof; (b) a solvent that dissolves the medicament; and (c) a pressure sensitive adhesive. Neither reference discloses or suggests a therapeutic formulation containing (a) salicylic acid or a pharmaceutically acceptable salt thereof present in about 0.5 wt.% to about 2.0 wt.% of the therapeutic formulation; (b) a solvent that dissolves the salicylic acid; and (c) a pressure sensitive adhesive. Neither reference discloses or suggests a therapeutic formulation containing (a) a medicament selected from one or more topical psoriasis drugs, one or more topical dermatitis drugs, one or more topical eczema drugs, or a combination thereof; and (b) a hot melt adhesive. Thus, Ethier and Rolf et al. do not teach or suggest all the elements of any of the pending claims, and so do not establish the first requirement of a *prima facie* case of obviousness.

The Examiner has also pointed to no suggestion or motivation provided by Ethier or Rolf

to modify the teachings of their disclosures in a manner necessary to arrive at the presently claimed invention. In fact, Ethier teaches against the claimed invention. Applicant discloses in the present specification that the use of the sizing agent-treated backing of the present invention maintains the hydrogel from penetrating the backing too quickly (page 9, lines 10-12). The specification also discloses that the use of backing material treated with a sizing agent allows for the effective control of the rate of penetration by a gel or ointment (page 21, lines 21-24). In contrast, Ethier discloses that coatings often drastically reduce the porosity of fibrous substrates, and that maintaining porosity at a high level is very important (col. 1, lines 38-40). Ethier further advises curing the silicone substate in a manner such that the porosity of the bilayer substrate is substantially the same as that of organic polymer substrate prior to being coated (col. 2, lines 5-12). Thus, Ethier teaches against the presently claimed invention, wherein a portion of a backing is treated with a sizing agent such that the portion of the backing has a surface energy within a particular range. This is disclosed to prevent a hydrogel containing a medicament from penetrating the backing too quickly. Ethier, in contrast, suggests that greater porosity of the backing is always desirable.

The Examiner has also pointed to nothing in Ethier and Rolf that establishes a reasonable expectation of success in practicing the presently claimed invention.

The Examiner rejected claims 1-25, 32, 34-44, and 51-81 under 35 U.S.C. § 103(a) over Hymes in view of Ethier and Rolf. Hymes is removed as prior art by the enclosed rule 132 Declaration. Ethier and Rolf do not establish any of the three requirements of a *prima facie* case of obviousness. Accordingly, withdrawal of the rejection of the claims under 35 U.S.C. § 103(a) over Hymes in view of Ethier and Rolf is respectfully requested.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612-371-2111) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 4 day of February, 2003.

Candis B. Buending

Name

Signature